IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3924 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

MADHABHAI DEVABHAI PARMAR - Respondent(s)

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Appearance :

MR PD BHATE, AGP for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/10/2005

ORAL JUDGMENT

In the present petition, the petitioner State Government has challenged the legality of the award dated 30th May 2000 passed by the Labour Court, Junagadh. By the impugned award, the Labour Court allowed the

reference of the respondent-workman, set aside his termination dated 7th December 1995 and directed his reinstatement with full backwages.

2. Before the High Court, the petitioner has challenged the award mainly on two grounds. Firstly, it is contended that the award was passed ex-parte and that the same should be set aside permitting the petitioner to lead fresh evidence. Secondly, it is contended that the respondent was engaged by the Forest Department which is not an industry. Both the grounds raised by the petitioner cannot be sustained. No reasons have been stated to convince the Court to set aside the ex-parte award. The reference was made in the year 1996. Till it was disposed of in May 2000, even written statement was not filed by the petitioner. No participation was made during the pendency of the award. From the order dated 11.6.2001 passed in the petition, by which the petition was admitted, it can be seen that even at that stage, no request was made for remanding the case to the Labour Court. More than four years have passed since then. At the time of final hearing, considering the facts and circumstances and the equity that has been created, it would be inappropriate to permit the petitioner to have

second round of litigation by remanding the proceedings. Regarding the question of petitioner being an industry or not, such a question was never raised before the Labour Court. The same, therefore, cannot be permitted to be raised for the first time before the High Court as held by the Full Bench in the case of G.F.P.G.F.W. Union v. State, 2004(2) GLR 1488.

3. The decision of the Labour Court to strike down the termination, therefore cannot be faulted. The question of backwages, however, remains. Learned advocate Shri Paul submitted that considering the total length of forced lay-off, the Court may pass appropriate orders modulating the entitlement of the workman for the backwages. Considering the fact that the entire period is rather long and considering the fact that the award was passed ex parte, which contrary to normal norm of this Court is not being set aside to reopen the reference, I find it appropriate to direct that the workman shall be entitled to 30 per cent backwages for the entire period from the date of termination till his reinstatement.

4. In the result, the award of the Labour Court is

modified. Direction for reinstatement is upheld. Direction for payment full backwages is modified by providing that the workman will receive 30 per cent backwages from the date of termination till reinstatement. The reinstatement shall be carried out within four weeks from the date of receipt of a copy of this order. With these directions, the petition is allowed to the above extent. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)